Abd Rahman bin Haji Maidin v Timbalan Menteri Dalam Negeri, Malaysia & Ors

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO M–05–24 OF 1999
SHAIK DAUD, SITI NORMA YAAKOB AND HAIDAR JJCA
15 FEBRUARY 2000

Preventive Detention *— Detention order — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Failure to indicate whether criminal activities were past or present — Ambiguity in detention order — Delay from time cause of appellant's last act of detention was known to time detention order was issued — Whether detention order valid — Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(2) & 6(1)*

On 7 October 1998, an order under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') was issued detaining the appellant at a detention centre for two years. It was not disputed that the police had been investigating into the appellant's involvement in the trafficking of dangerous drugs between the period of November 1997 to February 1998. It was also not disputed that together with the detention order, the appellant was also served with a statement which set out the grounds on which the detention order was made and identified three specific charges with full particulars of the appellant's criminal activities on which the detention order was based. The appellant applied for a writ of habeas corpus on the ground that his detention was illegal because: (i) the detention order failed to indicate whether the appellant's criminal activities were past or present and was vague and ambiguous and thus invalid; and (ii) there had been a long delay from the time the cause of his last act of detention was known to the time the detention order was issued.

Held, dismissing the appeal:

(1) Section 6(1) of the Act identifies the criminal activities of two categories of persons and the appellant falls within the first category, ie he was detained for his past criminal activities in the trafficking of ganja and such activities were confined to the period between November 1997 to February 1998. The defect in the detention order, if indeed it could be considered so, was to form only and not to substance. In any event, if indeed the appellant was unsure as to the true extent of his involvement, present or past, from the detention order, that uncertainty must have been put to rest from a reading of the statement itself (see pp 112E, G, 113E–F).

(2) The Deputy Minister had affirmed that the delay was due to the length of time it took the police to investigate into the appellant's past criminal activities. This is a legitimate and acceptable explanation and on the circumstances of this appeal, the six months gap was not too remote as to render the detention order

A invalid. Furthermore, the appellant was in police custody for 58 days, well within the time fixed by s 3(2) of the Act, when the detention order was issued against him. As such, this is an added factor that when the detention order was issued, the proper procedure was adopted and there was no mala fide to warrant a finding that the detention was illegal (see p 114A, E–F).

B

[Bahasa Malaysia summary

C Pada 7 Oktober 1998, suatu perintah di bawah s 6(1) Akta Dadah Berbahaya (Peraturan Pencegahan Khas) 1985 ('Akta tersebut') telah dikeluarkan yang menahan perayu di sebuah pusat serenti selama dua tahun. Adalah tidak dipertikaikan bahawa pihak polis telah menyiasat pembabitan perayu dalam pengedaran dadah berbahaya di antara bulan November 1997 hingga Februari 1998. Adalah juga tidak dipertikaikan bahawa bersama perintah tahanan, perayu juga telah

D disampaikan dengan suatu pernyataan yang menyatakan alasan yang merupakan asas perintah tahanan dan mengenal pasti tiga pertuduhan khas dengan butir-butir penuh mengenai kegiatan jenayah perayu atas mana perintah tahanan didasarkan. Perayu memohon writ habeas corpus berdasarkan alasan perintah tahanan tidak menunjukkan sama ada kegiatan jenayah perayu berlaku pada masa yang lalu atau masa

E sekarang dan adalah kurang jelas dan justeru itu tak sah; dan (ii) terdapat kelewatan yang melampau dari masa kausa tindakan tahanan yang terkini sehingga masa perintah tahanan dikeluarkan.

Diputuskan, menolak rayuan:

F (1) Seksyen 6(1) Akta tersebut mengenal pasti dua kategori kegiatan jenayah dan perayu dirangkumi oleh kategori pertama, iaitu beliau ditahan untuk kegiatan jenayah dalam pengedaran ganja dan kegiatan demikian terhad kepada tempoh di antara bulan November 1997 dan Februari 1998. Ketidaksempurnaan dalam perintah tahanan, sekiranya boleh diandaikan demikian, hanya

G dalam rupa sahaja dan bukan kandungannya. Walau bagaimana pun, sekiranya perayu tidak pasti tentang takat penuh pembabitannya, baik masa dahulu atau masa sekarang, dari perintah tahanan, ketidakpastian itu mestilah diselesaikan daripada bacaan pernyataan sendiri (lihat ms 112E, G, 113E–F).

H (2) Timbalan Menteri telah mengikrarkan bahawa kelewatan adalah disebabkan tempoh masa untuk polis menyiasat kegiatan jenayah perayu dahulu. Ini merupakan penjelasan yang sah dan boleh diterima dan atas keadaan rayuan ini, perbezaan selama enam bulan tidaklah begitu mustahil hingga menyebabkan perintah tahanan tak sah. Tambahan pula, perayu berada dalam tahanan

I polis selama 58 hari, yang jelas diliputi oleh tempoh yang ditetapkan oleh s 3(2) Akta tersebut, apabila perintah tahanan dikeluarkan terhadapnya. Oleh yang demikian, ini merupakan

satu faktor tambahan bahawa ketika perintah tahanan dikeluarkan, prosedur yang wajar telah diterimapakai dan tiada mala fide untuk mewajarkan pendapat bahawa tahanan adalah menyalahi undang-undang (lihat ms 114A, E–F).] A

Notes B

For cases on detention order generally, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1110–1207.

Cases referred to C

Chan Ng v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors [1995] 2 CLJ 798 (refd)

Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129 (refd)

Morgan a/l Perumal v K/I Hussein bin Abdul Majid & Ors [1998] 3 MLJ 335 (refd) D

Sahib Singh Dugal v Union of India AIR 1966 SC 283 (refd)

Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Ors [1975] 2 MLJ 279 (refd)

Legislation referred to E

Criminal Procedure Code (FMS Cap 6) s 365(1)(b)

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(1), (2), (3), 5(4), 6(1), 9(1), (2)

S Balasekaran (*Feisal bin Abu Bakar* and *Anita Rajah* with him) (*Bala & Co*) for the appellant.

Abdul Alim Abdullah (Senior Federal Counsel) (*Kamaludin Mohd Said* with him) (Attorney General's Chambers) for the respondents. F

Siti Norma Yaakob JCA (delivering judgment of the court): On 9 August 1998, the appellant was arrested and detained by the Kelantan Narcotics Department under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). On 7 October 1998, the Deputy Minister for Home Affairs issued an order detaining the appellant for two years with effect from 7 October 1998 at the Rehabilitation Centre, Simpang Renggam, Johore managed by the third respondent, under s 6(1) of the Act. The appellant was served with the detention order the same day and likewise the appellant's wife was notified of the same. G H

On 22 December 1998, the appellant applied by way of an originating summons, for a writ of habeas corpus under s 365(1)(b) of the Criminal Procedure Code (FMS Cap 6), alleging that his continued detention is illegal based principally on the ground that the relevant provisions of the Act relating to his detention had not been complied with and that there had been a long delay from the time the cause of his last act of detention was known to the time the detention order was issued. The High Court rejected both allegations and dismissed the appellant's originating summons. I

A In his petition, the appellant raised 13 grounds of appeal but before us, his counsel, Dr S Balasekaran confined his arguments to three grounds which effectively relate to the failure of the Deputy Minister to indicate precisely under which provisions of s 6(1) of the Act he was detained and the delay point.

B The appellant affirmed two affidavits one in support of his application and the other in reply. The respondents also rely on two affidavits, one affirmed by Chief Inspector Mohamad bin Johari, the officer who conducted the investigations into the appellant's criminal activities and the other by the Deputy Minister himself.

C The first objection taken by the appellant is the ambiguity apparent on the face of the detention order itself as to render it invalid. It is not disputed that the police had been investigating into the appellant's involvement in the trafficking of dangerous drugs between the period November 1997 to February 1998, six months before his arrest and detention. During that period he was alleged to have been trafficking in ganja in Batu Pahat, D Johore, selling the dangerous drug at RM1,300 per kg from supplies obtained in Kelantan where it was purchased at RM900 per kg and during the period of his involvement he had in his possession a total of 47kg of ganja for distribution. It must be emphasised here that the investigations that were carried out relate to the appellant's past criminal activities and this fact, the appellant contends must be clearly identified in the detention order E itself.

At this point it is appropriate that we reproduce the penultimate part of the detention order that is being attacked.

> Bahawasanya, selepas menimbangkan laporan lengkap penyiasatan dan laporan Pegawai Siasatan yang dikemukakan, saya adalah puashati bahawa F orang yang tersebut di bawah ini pernah *ada/sedang ada kaitan dengan aktiviti yang berhubungan *dengan/yang melibatkan pengedaran dadah merbahaya;

At the foot of the order there is a directive to delete whatever is not relevant at the places where the star or asterisk appears in the following manner

G *Potong dimana tidak berkenaan.

It is the appellant's contention that in falling to firstly cross out the true nature of the appellant's criminal activities as to indicate whether such activities were past or present and secondly to indicate his involvement or association in the trafficking of dangerous drugs, the appellant is left in H doubt as to the true nature and reason of his detention. As such the detention order is vague and there is ambiguity on the face of it and this makes the detention order invalid.

Perhaps the answer to this lies in the particular section of the law under which the detention order was issued. Section 6(1) of the Act makes the following provisions. I

> Power to order detention and restriction of persons
>
> (1) Whenever the Minister, after considering —

(a) the complete report of investigation submitted under sub-s (3) of s 3; and
(b) the report of the Inquiry Officer submitted under sub-s (4) of s 5;

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained by order (hereinafter referred to as a 'detention order' direct that such person be detained for a period of not exceeding two years.

From our reading of s 6(1), it would seem that it encompasses two categories of persons, namely those who have been associated with any activity relating to or including the trafficking in dangerous drugs and those who are currently or presently associated with the same type of criminal activity. It does not, we say, contain two separate limbs as was suggested before us. The effect of the use of the conjunction 'or' between the words 'relating to' and 'involving' in the sub-section is to give a wider and an all encompassing meaning to a detainee's criminal activity. That same argument was raised and rejected by Mohd Ghazali JC. (as he then was) in the case of *Chan Ng v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1995] 2 CLJ 798. We confirm the finding of the learned judicial commissioner in that case to have been correctly given and adopt the same reasoning.

As we have stated, what s 6(1) does is to identify the criminal activities of two categories of persons and the appellant falls within the first category, ie he was detained for his past criminal activities in the trafficking of ganja and such activities were confined to the period between November 1997 to February 1998.

The issue then is whether the Deputy Minister's failure to identify the category of persons to whom the appellant is one, by not crossing out the irrelevant words 'sedang ada' in the detention order makes the detention order vague and defective as to nullify it. We say it does not for the following reasons.

It is a defect, if indeed it can be considered so, as to form only and not to substance. See the case of *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129. The substance of the case here is that the Deputy Minister had considered the complete report of the police investigations and the report of the Inquiry Officer submitted to him under ss 3(3) and 5(4) of the Act, and after satisfying himself that the extent of the appellant's involvement in the trafficking of ganja is a real threat to public order, he had issued the detention order.

It is not disputed that together with the detention order, the appellant was also served with a statement dated 7 October 1998 signed by an assistant secretary on instructions of the Deputy Minister. The statement sets out the grounds on which the detention order was made and identifies three specific charges with full particulars of the appellant's criminal activities on which the detention order was based. We can do no better than to reproduce that statement:

A Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985

Nama Orang Tahanan: Abd Rahman bin Haji Maidin

No K/P: 611028–01–5355 (6273073)

Alasan-alasan yang atasnya perintah itu dibuat:

B Bahawa kamu pernah ada kaitan dengan apa-apa aktiviti yang berhubungan atau yang melibatkan pengedaran dadah berbahaya.

Tuduhan-tuduhan yang atasnya perintah itu diasaskan:

1 Bahawa kamu adalah seorang pengedar dadah ganja di Bandar Batu Pahat, Johor sejak November 1997 hingga Februari 1998.

C 2 Bahawa kamu mengedar dadah ganja dalam bentuk kilo dengan harga RM1,300 bagi satu kilo.

3 Bahawa kamu mendapat bekalan dadah ganja dari pengedar dadah ganja di Kelantan dengan harga RM900 satu kg dan sepanjang tempoh yang tersebut di atas kamu telah tiga kali memperolehi ganja berjumlah 47kg untuk diedarkan.

D

Dengan arahan
Timbalan Menteri Dalam Negeri
tt

Tarikh: 7 Oktober 1998 (MOHAMMAD RAZIN BIN ABDULLAH)
Penolong Setiausaha
E Kementerian Dalam Negeri

(Rujukan: KDN S205/1182/5-9092)

The aforesaid statement was issued pursuant to s 9(2) of the Act and if indeed the appellant was unsure as to the true extent of his involvement, F present or past, from the detention order, that uncertainty must have been put to rest from a reading of the statement itself. If such reading had still not resolved his doubt, he has a remedy under s 9(1) of the Act to make representations to an Advisory Board, a right that he acknowledged he had been informed of but which he did not take advantage of. We say that under these circumstances it is too late to do so now before us.

G Finally we come to the appellant's objection that the six months gap between the last known act of his criminal activities in February 1998 to the issuance of the detention order on 7 October 1998 is too remote in point of time to justify his detention. See the case of *Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279.

H That same objection was raised and decided by this court in the case of *Morgan a/l Perumal v K/I Hussein bin Abdul Majid & Ors* [1998] 3 MLJ 335, where in the absence of any explanation, a delay of over two years, was held to be too remote to justify the detention. That case went to the Federal Court which allowed the appeal but unfortunately we do not have the benefit of a written judgment to guide us as to whether the delay point was I taken on appeal. In the absence of such a guidance, we, like the judicial Commissioner in the court below, have to fall back on our earlier decision on this point reached in *Morgan*'s case.

In the instant appeal, the Deputy Minister has affirmed that the delay was due to the length of time it took the police to investigate into the appellant's past criminal activities. This we consider, is a legitimate and acceptable explanation and we say that on the circumstances of this appeal, the six months gap is not too remote as to render the detention order invalid. We also need to distinguish the circumstances surrounding *Yeap Hock Seng*'s case. There, Abdoolcader J (as he then was) after citing *Sahib Singh Dugal v Union of India* AIR 1966 SC had this to say at p 283 of the report.

> This case is also of some significance on another aspect. It also held that a detention order is generally passed in the light of evidence about the past activities of the person concerned. These past activities should, however, ordinarily be proximate in point of time to justify the detention order. In that case the petitioners had been in jail for only three months before the order of detention was passed against them, and the court held that it could not therefore be said that the conduct of the petitioners before this period of three months was not proximate enough to justify an order of detention based on that conduct. ... The position of the applicant in the matter before me would seem to be not dissimilar to that in *Sahib Singh Dugal* as he was in police custody for only about four and a half months before the detention order was made against him.

It would appear that the length of time calculated in the two cases cited, refers to the length of time the detainee was kept in custody before the detention order was issued. It did not refer to the length of time the last act of criminal activities was known to the date the detention order was made.

The appellant in the instant appeal was in police custody for 58 days, well within the time fixed by s 3(2) of the Act, when the detention order was issued against him. As such this is an added factor that when the detention order was issued, the proper procedure was adopted and there is no mala fide to warrant our finding that the detention is illegal.

For the reasons appearing in this judgment, we have no reason to disturb the finding of the judicial commisisoner and we accordingly dismiss this appeal and affirm the dismissal of the appellant's petition for habeas corpus.

Appeal dismissed.

Reported by Jafisah Jaafar